

MORRISON & FOERSTER LLP

SAN FRANCISCO
LOS ANGELES
DENVER
PALO ALTO
WALNUT CREEK
SACRAMENTO
CENTURY CITY
ORANGE COUNTY
SAN DIEGO

ATTORNEYS AT LAW

2000 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763

NEW YORK
WASHINGTON, D.C.
NORTHERN VIRGINIA
LONDON
BRUSSELS
BEIJING
HONG KONG
SINGAPORE
TOKYO

December 18, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: **EX PARTE**

IB Docket No. 01-185; ET Docket No. 00-258; SAT-MOD-20020719-00103; SAT-MOD-20020719-00105; SAT-T/C-20020718-00114; SAT-T/C-20020719-00104

Dear Ms. Dortch:

On December 17, 2002, ICO Global Communications (Holdings) Ltd. ("ICO"), represented by Gerry Salemme and the undersigned, met with Bryan Tramont, senior legal advisor to Chairman Michael Powell, to discuss the status of the above captioned proceedings.

During the meeting the parties discussed milestones issues for Mobile Communications Holding Inc. and Constellation Communications Holding, Inc. and discussed FCC precedent for milestone enforcement. ICO otherwise relied on the attached talking points.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically using the Commission's Electronic Comment Filing System.

Very truly yours,

/s/ Cheryl A. Tritt

Cheryl A. Tritt

Counsel to ICO Global Communications (Holdings) Ltd.

cc: B. Tramont

FCC SATELLITE SHARING CASES APPROVING MILESTONE COMPLIANCE

Case	FCC Findings
<p><i>Applications of United States Satellite Broadcasting Co. Inc.</i>, 7 FCC Rcd 7247 (MMB 1992)</p>	<p>First due diligence milestone required USSB “to complete contracting for construction of the satellite station(s) within one year of the grant of the construction permit.”</p> <p>FCC interpreted first due diligence milestone to require contract that “contains no unresolved contingencies which could preclude substantial construction of the satellites.”</p> <p>FCC found that USSB-Hughes sharing agreement “complies with the first component of the due diligence requirement.”</p> <p>FCC found that payment schedule contained in sharing agreement and USSB’s compliance with payment schedule were “sufficient ‘to determine that [USSB] is making a financial commitment to the construction of the satellite.’”</p> <p>FCC found that sharing agreement complied with first milestone, even though contract called for implementation of a modified system requiring FCC approval.</p>
<p><i>Application of Volunteers in Technical Assistance</i>, 12 FCC Rcd 3094 (IB 1997) (“VITA IP”)</p>	<p>FCC established milestones requiring VITA to complete construction and launch of satellite by specific dates.</p> <p>FCC rejected opponent’s argument that sharing arrangement did not satisfy “either the letter or the spirit of the construction and launch milestones.”</p> <p>FCC rejected opponent’s argument that VITA-Final Analysis sharing agreement contained open contingencies in violation of milestones.</p> <p>FCC viewed VITA-Final Analysis sharing agreement as just like other “construction and launch services agreements [that] have contingencies that may result in the termination of the agreement.”</p>
<p><i>Application of Volunteers in Technical Assistance</i>, 12 FCC Rcd 13995 (1997) (“VITA P”)</p>	<p>FCC established milestones requiring VITA to complete construction and launch of satellite by specific dates.</p> <p>By approving VITA-CTA sharing arrangement, FCC recognized that timely implementation of sharing arrangement would satisfy construction and launch milestones.</p>

FCC APPROVAL OF SATELLITE SHARING ARRANGEMENTS

Case	FCC Action
<i>Applications of United States Satellite Broadcasting Co. Inc.</i> , 7 FCC Rcd 7247 (MMB 1992)	Granted modification application to permit USSB to implement DBS system by purchasing capacity on satellite licensed to Hughes.
<i>Application of Volunteers in Technical Assistance</i> , 12 FCC Rcd 13995 (1997) (“ <i>VITA I</i> ”)	Affirmed Int’l Bureau’s grant of authorization to VITA to construct and operate Little LEO system under sharing arrangement with CTA. CTA would construct, own, and operate satellite and use 50% of satellite capacity, while VITA would retain control of licensed frequencies and satellite capacity.
<i>Application of Volunteers in Technical Assistance</i> , 12 FCC Rcd 3094 (IB 1997) (“ <i>VITA II</i> ”)	Authorized VITA to construct and operate Little LEO system under sharing arrangement with Final Analysis, an experimental radio licensee. Final Analysis would construct, own, and operate satellite and use 50% of satellite capacity, while VITA would own and control satellite transponders operating on its licensed frequencies.
<i>Application of AMSC Subsidiary Corp.</i> , 13 FCC Rcd 12316 (IB 1998)	Granted modification application to permit AMSC to acquire 50% ownership interest in TMI’s Canadian-licensed satellite and shift its L-band MSS operations to that satellite. AMSC and TMI each would operate independently of each other and according to the terms of its respective license.
<i>Columbia Communications Corp.</i> , 7 FCC Rcd 122 (1991) (“ <i>Columbia Authorization Order</i> ”)	Authorized Columbia to provide FSS by purchasing capacity on two satellites owned and operated by NASA.
<i>Columbia Communications Corp.</i> , 16 FCC Rcd 10867 (IB 2001) (“ <i>Columbia Reconsideration Order</i> ”)	Authorized Columbia to provide FSS by purchasing capacity on a satellite owned and operated by NASA.
<i>GTE Spacenet Corp.</i> , 2 FCC Rcd 5312 (CCB 1987)	Granted a license to Geostar to operate a radiodetermination satellite service payload on a satellite licensed to GTE Spacenet.
<i>Dominion Video Satellite, Inc.</i> , 14 FCC Rcd 8182 (IB 1999)	Authorized Dominion Video to operate DBS system by leasing capacity on a satellite licensed to Echostar.

FCC CASES REFLECTING MILESTONE COMPLIANCE ARE DISTINGUISHABLE

Case	Facts & Findings	Distinguishable Facts of CCHI/MCHI/ICO Sharing
<p><i>Advanced Communications Corp.</i>, 11 FCC Rcd 3399 (1995)</p>	<p>FCC denied ACC's second request for milestone extension to construct DBS system, finding that ACC had over 10 years, including a 4-year extension, to construct DBS system and did not warrant a second extension.</p> <p>ACC proposed to assign DBS authorization to Tempo DBS or, alternatively, implement capacity purchase agreement ("CPA") with TCL. FCC declined to treat CPA as an arrangement for launch of ACC's DBS system because: (1) CPA required ACC to sell all rights to transponder capacity; (2) CPA did not require ACC to make any payments for satellite construction or permit ACC to acquire ownership in satellite; and (3) ACC contracted away control of its licensed frequencies and agreed to dissolve upon sale of capacity.</p> <p>FCC distinguished prior approval of USSB-Hughes sharing arrangement by noting that USSB owned part of shared satellite and operated system independently of Hughes.</p>	<p>CCHI & MCHI are not seeking milestone extension in the first instance. CCHI & MCHI do not require milestone extension because sharing agreements satisfy first milestone.</p> <p>Under sharing agreements, CCHI & MCHI (1) retain rights to sell transponder capacity; (2) are required to make payments in exchange for ownership in satellite capacity; and (3) retain control of their licensed frequencies and will operate systems independently of ICO.</p> <p>Like USSB, CCHI & MCHI will acquire ownership interest in satellite capacity and will maintain independent operations under the sharing agreements.</p>
<p><i>Dominion Video Satellite, Inc.</i>, 14 FCC Rcd 8182 (IB 1999)</p>	<p>FCC found that Dominion Video's <i>leasing</i> of satellite capacity on Echostar's satellite did not satisfy the due diligence milestones.</p>	<p>CCHI & MCHI are not leasing, but rather purchasing ownership interests in capacity on the ICO system.</p>
<p><i>Columbia Communications Corp.</i>, 16 FCC Rcd 10867 (IB 2001) ("Columbia Reconsideration Order")</p>	<p>FCC declined to allow Columbia's sharing arrangement to satisfy C-band FSS milestones because the shared satellite was not subject to and did not comply with full frequency reuse requirements applicable to Columbia's licensed C-band FSS system.</p>	<p>CCHI & MCHI are purchasing capacity on an authorized 2 GHz MSS system that is subject to the same service and technical requirements applicable to CCHI's & MCHI's licensed systems.</p>

<p><i>GTE Spacenet Corp.</i>, 2 FCC Rcd 5312 (CCB 1987)</p>	<p>FCC declined to allow Geostar's sharing arrangement to satisfy RDSS milestones because the shared satellite was licensed under and subject to FSS service and technical rules that were completely different from those governing Geostar's licensed RDSS satellite.</p>	<p>CCHI & MCHI are purchasing capacity on an authorized 2 GHz MSS system that is subject to the same service and technical requirements applicable to CCHI's & MCHI's licensed systems.</p>
---	---	---

The MCHI and CCHI Contracts are Non-Contingent

- **The capacity contracts satisfy all the points of central importance under the Commission's precedent. Specifically:**
 - **MCHI and CCHI have each made significant financial commitments to the construction of shared infrastructure, and that construction has progressed far beyond the "commencement" that is required;**
 - **MCHI and CCHI will each own a portion of the satellite infrastructure;**
 - **MCHI and CCHI will each take part in the ongoing operation of the system;**
 - **MCHI and CCHI will each be independent service providers after the consummation of the ride-sharing arrangement; and**
 - **MCHI and CCHI must each pay for their portion of the satellite infrastructure with cash rather than the contribution of a "bare" license, as evidenced by the fact that this capacity agreement is not voidable by either party if the FCC refuses to allow the MCHI and CCHI licenses to be assigned to ICO.**

The terrestrial industry attacks on the capacity agreements are without merit.

- The Commission has never required “final payment” be made on a construction contract to satisfy “commencement of construction.”
- Commission precedent requires a substantial up-front payment, which MCHI and CCHI made in cash on the date the parties signed the legally binding agreement.
- Although “closing” and “delivery” of the channels will occur in the future, this is parallel to a manufacturing contract, in which there are typically many conditions precedent to the ultimate *delivery* of a completed satellite.
- In the context of the ICO-MCHI/CCHI agreement, “delivery” means handing over full control of fully operational satellite facilities already in orbit. Unless and until MCHI and CCHI are authorized to assume operational control (*i.e.*, when their modification applications have been granted and all milestone issues resolved), it would violate the terms of ICO’s license, and arguably the Communications Act, for ICO to turn over operational control of in-orbit assets to any party not authorized to operate them.
- No case, rule, or policy requires this, any more than the Commission requires manufacturers to promise that they will turn over operational, in-orbit satellites even if the purchasers have no valid license.